

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

|   |   |            |
|---|---|------------|
| In the Matter of:                             | ) |            |
|   | ) |            |
| Century-TCI California, L.P.                  | ) |            |
|   | ) | CSR 5904-E |
| Adelphia California Cablevision L.L.C.        | ) |            |
|   | ) |            |
| Adelphia Cablevision of Simi Valley L.L.C.    | ) |            |
|   | ) |            |
| Petition for Determination of Effective       | ) |            |
| Competition in Various California Communities | ) |            |

**MEMORANDUM OPINION AND ORDER**

**Adopted: April 11, 2003**

**Released: April 16, 2003**

By the Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. Century-TCI California, L.P., Adelphia California Cablevision L.L.C. and Adelphia Cablevision of Simi Valley L.L.C., d/b/a Adelphia Cable Communications ("Adelphia") has filed with the Commission a petition pursuant to Section 623(a)(1) of the Communications Act of 1934, as amended ("Communications Act"), and Sections 76.7(a)(1) and 76.905(b)(2) of the Commission's rules for a determination of effective competition in five California communities (the "Communities").<sup>1</sup> Adelphia alleges that its cable systems serving the Communities are subject to effective competition and therefore exempt from cable rate because of competing service provided by two direct broadcast satellite ("DBS") providers, DirecTV, Inc. ("DirecTV") and DISH Network ("DISH"). No opposition to the petition was filed.

**II. DISCUSSION**

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,<sup>2</sup> as that term is defined by Section 76.905 of the Commission's rules.<sup>3</sup> The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.<sup>4</sup> Based on the

<sup>1</sup>See 47 U.S.C. § 543(a)(1); 47 C.F.R. §§ 76.7(a)(1) and 76.905(b)(2). The Communities are Agoura Hills, Diamond Bar, Calabasas, South Gate, and Simi Valley. Calabasas, Diamond Bar, and Simi Valley are certified to regulate basic cable service rates.

<sup>2</sup>47 C.F.R. § 76.906.

<sup>3</sup>47 C.F.R. § 76.905.

<sup>4</sup>See 47 C.F.R. §§ 76.906 and 907.

record in this proceeding, Adelphia has met this burden.

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors (“MVPD”) each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds fifteen percent of the households in the franchise area.<sup>5</sup>

4. Turning to the first prong of the competing provider test, DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.<sup>6</sup> Adelphia has provided evidence of the advertising of DBS service in the news media serving the Communities.<sup>7</sup> With respect to the issue of program comparability, we find that the programming of the DBS providers satisfies the Commission's program comparability criterion because the DBS providers offer at least 12 channels of video programming, including at least one non-broadcast channel.<sup>8</sup> We find that Adelphia has demonstrated that the Communities are served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the Communities. Adelphia also demonstrated that the two DBS providers are physically able to offer MVPD service to subscribers in the Communities, that there exists no regulatory, technical, or other impediments to households within the Communities taking the services of the DBS providers, and that potential subscribers in the Communities have been made reasonably aware of the MVPD services of DirecTV and DISH. Therefore, the first prong of the competing provider test is satisfied for the Communities served by Adelphia.

5. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Adelphia sought to determine the competing provider penetration of its franchise areas by purchasing a report from SkyTrends that identified the number of subscribers attributable to the DBS providers within the Communities on a five-digit zip code basis.<sup>9</sup> Adelphia asserts that it is the largest MVPD in the Communities because Adelphia's subscribership exceeds the aggregate DBS subscribership for those franchise areas.<sup>10</sup> Based upon the aggregate DBS subscriber penetration levels, as reflected in Attachment A, calculated using Census 2000 household data,<sup>11</sup> we find that Adelphia has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in each of the Communities. Therefore, the second prong of the competing provider test is satisfied. Based on the foregoing, we conclude that Adelphia has submitted sufficient evidence demonstrating that its cable systems serving the Communities are subject to effective competition.

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<sup>5</sup>47 U.S.C. § 543(1)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

<sup>6</sup>*See MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

<sup>7</sup>*See* Adelphia Petition at 4-5 and Exhibit A.

<sup>8</sup>*See* 47 C.F.R. § 76.905(g). *See also* Adelphia Petition at 5 and Exhibits B, C, and D.

<sup>9</sup>Adelphia Petition at 7-9 and Exhibit F.

<sup>10</sup>*Id.* and Exhibit E.

<sup>11</sup>*Id.* at 7-10 and Exhibit G.

### III. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed in the captioned proceeding by Century-TCI California, L.P., Adelphia California Cablevision L.L.C. and Adelphia Cablevision of Simi Valley L.L.C., d/b/a Adelphia Cable Communications **IS GRANTED**.

7. **IT IS FURTHER ORDERED** that the certifications of Calabasas, Diamond Bar, and Simi Valley to regulate basic cable service rates are revoked.

8. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.<sup>12</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckert  
Deputy Chief, Policy Division, Media Bureau

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<sup>12</sup>47 C.F.R. § 0.283.

## CSR-5904-E

**COMMUNITIES SERVED BY CENTURY-TCI CALIFORNIA, L.P.  
ADELPHIA CALIFORNIA CABLEVISION L.L.C. AND ADELPHIA  
CABLEVISION OF SIMI VALLEY L.L.C. D/B/A ADELPHIA CABLE COMMUNICATIONS**

| <b>Communities</b> | <b>CUIDS</b> | <b>CPR*</b> | <b>2000<br/>Census<br/>Households<sup>+</sup></b> | <b>Estimated<br/>DBS<br/>Subscribers<sup>+</sup></b> | <b>Adelphia<br/>Subscribers<sup>+</sup></b> |
|--------------------|--------------|-------------|---|--|---|
| Agoura Hills       | CA1025       | 18.0        | 6,874   | 1,235  | 4,223                                       |
| Diamond Bar        | CA1394       | 15.3        | 17,651  | 2,699  | 11,887                                      |
| Calabasas          | CA1482       | 25.1        | 7,229   | 1,814  | 2,828                                       |
| South Gate         | CA1018       | 18.7        | 23,213  | 4,331  | 6,208                                       |
| Simi Valley        | CA0049       | 22.9        | 36,421  | 8,353  | 27,770                                      |

\*CPR = Percent of competitive DBS penetration rate.

<sup>+</sup>See Adelphia Petition at 7-10 and Exhibits G, F, and E.